

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HECTOR GONZALES,)	4:07CV3103
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
UNKNOWN FROISLAND, Sgt, et)	
al.,)	
)	
Defendants.)	
)	

This matter is before the court on six separate pending motions. Plaintiff filed four motions, two motions for restraining order (filing nos. 48 and 50) and two motions for discovery (filing nos. 49 and 51). Defendant Matt Woodyard filed a motion for leave to file out of time. (Filing No. 57.) Defendants Williams and Cropp filed a motion to dismiss and supporting brief. (Filing Nos. 53 and 54.)

Plaintiff's Motions for Restraining Order

Plaintiff filed two separate motions for “restrinig order” which the court construes as requests for a temporary restraining order. (Filing Nos. 48 and 50.) Plaintiff’s motions for temporary restraining order do not indicate what conduct he seeks to be restrained nor does Plaintiff address the standards set forth by *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109 (8th Cir. 1981). Therefore, Plaintiff’s motions for restraining order are denied.

Plaintiff's Motions for Discovery

Plaintiff also filed two motions for discovery. In order to progress this case to final resolution, the court will enter a separate progression order approximately 30

days after Defendant Woodyard has answered, in accordance with the court's Order of August 6, 2007. (Filing No. 8.) The progression order will address issues of discovery. Plaintiff's motions are therefore denied.

Defendant Woodyard's Motion for Leave to File Out of Time

On August 31, 2007, Defendant Officer Matt Woodyard filed his motion for leave to file out of time. (Filing No. 57.) The court has discretion to permit additional time for a defendant to answer or otherwise plead even where the specified period in which to do so has expired. Fed. R. Civ. Pro. 6(b). Other defendants represented by the Nebraska Attorney General's Office have already filed an answer in this matter. (Filing No. 55.) The court finds that Defendant Woodyard has shown excusable neglect and should be permitted to file an answer or other responsive pleading.

Defendants Williams' and Cropp's Motion to Dismiss

Also pending before the court is a motion to dismiss filed on August 10, 2007 by Defendants Williams and Cropp. (Filing No. 53.) Although Plaintiff had 20 days in which to file a brief opposing this motion, he has not done so. *See* NECivR 7.1(b)(1)(B). However, on its own motion, the court will permit Plaintiff an additional 20 days from the date of this order in which to file a brief opposing the motion to dismiss. If no opposing brief is filed, the court will rule on Defendants Williams' and Cropp's motion to dismiss without further notice.

IT IS THEREFORE ORDERED that:

1. Plaintiff's motions for "restring" order, which the court construes as motions for temporary restraining order (filing nos. 48 and 50) are denied.

2. Plaintiff's motions for discovery (filing nos. 49 and 51) are denied and the court will enter a separate progression order addressing discovery approximately 30 days after Defendant Woodyard has answered.

3. Defendant Officer Matt Woodyard's motion for leave to file out of time (filing no. 57) is granted. Defendant Woodyard shall have until October 1, 2007 to file an answer or other responsive pleading.

4. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: October 1, 2007: deadline for Defendant Woodyard to answer or otherwise plead.

5. Plaintiff shall have until October 9, 2007 in which to file a brief opposing Defendants Williams' and Cropp's motion to dismiss. (Filing No. 53.) In the absence of an opposing brief, the court will rule on Defendants' motion without further notice.

6. The Clerk of the court is directed to set a pro se case management deadline with the following text: October 9, 2007: check for the filing of Plaintiff's opposition to motion to dismiss.

September 19, 2007.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge